

AMENDED IN ASSEMBLY JUNE 1, 2007

AMENDED IN ASSEMBLY MARCH 27, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

## ASSEMBLY BILL

**No. 422**

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**Introduced by Assembly Member Hancock**

February 16, 2007

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An act to amend ~~Sections 25296.10 and~~ *Section 25356.1.5* of the Health and Safety Code, and to amend Section 13304 of, *and to add Section 13304.2 to*, the Water Code, relating to hazardous substances.

### LEGISLATIVE COUNSEL'S DIGEST

AB 422, as amended, Hancock. ~~Underground storage tanks; hazardous~~ *Hazardous* substances: water quality.

~~(1) Existing law generally regulates the storage of hazardous substances, including petroleum, in underground storage tanks and requires underground storage tanks that are used to store hazardous substances to meet certain requirements. Existing law requires each owner, operator, or other responsible party to take corrective action in response to an unauthorized release in compliance with specified law. Existing law requires any corrective action to ensure protection of human health, safety, and the environment, and to be consistent with any applicable waste discharge requirements or other order issued pursuant to specified laws governing water quality control.~~

~~Other existing law;~~

~~(1) Existing law, the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Superfund) Act *Superfund Act*) imposes liability for hazardous substance removal or remedial actions and requires the Department of Toxic Substances Control to adopt, by regulation, criteria~~

for the selection and for the priority ranking of hazardous substance release sites for removal or remedial action under the act. The California Superfund Act excludes releases of petroleum from that act. The California Superfund Act requires any response action taken or approved under that act to meet certain requirements with regard to, among other things, the preparation of the health or ecological risk assessment. The act requires the exposure assessment of that risk assessment to meet specified requirements, including the development of reasonable maximum estimates of exposure for both current land use conditions and reasonably foreseeable future land use conditions at the site.

~~This bill would require any corrective action taken in response to an unauthorized release from an underground storage tank intended to address potential human health and ecological hazards to also be consistent with, and no less stringent than, the response action requirements, with regard to health or ecological risk assessments, for hazardous substance releases imposed under the California Superfund Act.~~

~~The~~

*This* bill would require that the exposure assessment of any health or ecological risk assessment prepared in conjunction with a response action taken or approved pursuant to the California Superfund Act include the development of reasonable maximum estimates of exposure to volatile organic compounds that may enter structures that are on the site or that are proposed to be constructed on the site and may cause exposure due to accumulation of those volatile organic compounds in the indoor air of those structures.

(2) Existing law, the Porter-Cologne Water Quality Control Act (water quality control act), requires a person who discharges waste into the waters of the state in violation of waste discharge requirements or other order or prohibition issued by a regional board or the state water board, upon the order of that regional board or the state board, to clean up the waste or to abate the effects of the waste. The act subjects a person who violates a cleanup or abatement order to civil penalties.

This bill would require certain cleanup and abatement efforts conducted by a discharger under the water quality control act, in addition to addressing any water quality impacts or threats, to also address all potential human health and ecological threats caused or created by the discharge. The bill would require cleanup and abatement efforts intended to address potential human health and ecological threats to be consistent with, and no less stringent than, the *substantive* response action

requirements, with regard to health or ecological risk assessments, for hazardous substance releases imposed under the California Superfund Act.

*The bill would exclude a cleanup or abatement effort, that the regional board determines is an emergency response, from the requirement that the effort be consistent with those California Superfund Act substantive requirements.*

*This bill would provide that a person, conducting cleanup, abatement, or other remedial action for a brownfield for a hazardous substance that is neither de minimus nor authorized, may be required by the state board or a regional board to assess the potential human health or ecological risks caused or created by the discharge using human health and environmental screening levels or a site-specific assessment of risks. These provisions would not apply to a person conducting cleanup, abatement, or other remedial action that began prior to the effective date of the act.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 25296.10 of the Health and Safety Code~~  
2     ~~is amended to read:~~  
3     ~~25296.10. (a) Each owner, operator, or other responsible party~~  
4     ~~shall take corrective action in response to an unauthorized release~~  
5     ~~in compliance with this chapter and the regulations adopted~~  
6     ~~pursuant to Section 25299.3. In adopting corrective action~~  
7     ~~regulations, the board shall develop corrective action requirements~~  
8     ~~for health hazards and protection of the environment, based on the~~  
9     ~~severity of the health hazards and the other factors listed in~~  
10    ~~subdivision (b). The corrective action regulations adopted by the~~  
11    ~~board pursuant to Section 25299.77 to implement Section~~  
12    ~~25299.37, as that section read on January 1, 2002, that were in~~  
13    ~~effect before January 1, 2003, shall continue in effect on and after~~  
14    ~~January 1, 2003, until revised by the board to implement this~~  
15    ~~section and shall be deemed to have been adopted pursuant to~~  
16    ~~Section 25299.3.~~  
17    ~~(b) Any corrective action conducted pursuant to this chapter~~  
18    ~~shall ensure protection of human health, safety, and the~~  
19    ~~environment. The corrective action shall be consistent with any~~

1 applicable waste discharge requirements or other order issued  
2 pursuant to Division 7 (commencing with Section 13000) of the  
3 Water Code, all applicable state policies for water quality control  
4 adopted pursuant to Article 3 (commencing with Section 13140)  
5 of Chapter 3 of Division 7 of the Water Code, and all applicable  
6 water quality control plans adopted pursuant to Section 13170 of  
7 the Water Code and Article 3 (commencing with Section 13240)  
8 of Chapter 4 of Division 7 of the Water Code. Any corrective  
9 action conducted pursuant to this chapter intended to address  
10 potential human health and ecological hazards shall also be  
11 consistent with, and no less stringent than, the requirements of  
12 subdivisions (b), (c), (d), and (e) of Section 25356.1.5.

13 (e) (1) When a local agency, the board, or a regional board  
14 requires an owner, operator, or other responsible party to undertake  
15 corrective action, including preliminary site assessment and  
16 investigation, pursuant to an oral or written order, directive,  
17 notification, or approval issued pursuant to this section, or pursuant  
18 to a cleanup and abatement order or other oral or written directive  
19 issued pursuant to Division 7 (commencing with Section 13000)  
20 of the Water Code, the owner, operator, or other responsible party  
21 shall prepare a work plan that details the corrective action the  
22 owner, operator, or other responsible party shall take to comply  
23 with the requirements of subdivisions (a) and (b) and the corrective  
24 action regulations adopted pursuant to Section 25299.3.

25 (2) The work plan required by paragraph (1) shall be prepared  
26 in accordance with the regulations adopted pursuant to Section  
27 25299.3. The work plan shall include a schedule and timeline for  
28 corrective action.

29 (3) At the request of the owner, operator, or other responsible  
30 party, the local agency, the board, or the regional board shall review  
31 a work plan prepared pursuant to paragraph (1) and either accept  
32 the work plan, if it meets the requirements of the section, or  
33 disapprove the work plan if it does not meet those requirements.  
34 If the local agency, board, or the regional board accepts the work  
35 plan, it shall indicate to the owner, operator, or other responsible  
36 party, the actions or other elements of the work plan that are, in  
37 all likelihood, adequate and necessary to meet the requirements  
38 of this section, and the actions and elements that may be  
39 unnecessary. If the local agency, board, or regional board

1 ~~disapproves the work plan, it shall state the reasons for the~~  
2 ~~disapproval.~~

3 ~~(4) In the interests of minimizing environmental contamination~~  
4 ~~and promoting prompt cleanup, the responsible party may begin~~  
5 ~~implementation of the proposed action after the work plan has~~  
6 ~~been submitted but before the work plan has received regulatory~~  
7 ~~agency acceptance, except that implementation of the work plan~~  
8 ~~shall not begin until 60 calendar days from the date of submittal;~~  
9 ~~unless the responsible party is otherwise directed in writing by the~~  
10 ~~regulatory agency. However, before beginning implementation~~  
11 ~~pursuant to this paragraph, the responsible party shall notify the~~  
12 ~~regulatory agency of the intent to initiate proposed actions set forth~~  
13 ~~in the submitted work plan.~~

14 ~~(5) The owner, operator, or other responsible party shall conduct~~  
15 ~~corrective actions in accordance with the work plan approved~~  
16 ~~pursuant to this section.~~

17 ~~(6) When the local agency, the board, or the regional board~~  
18 ~~requires a responsible party to conduct corrective action pursuant~~  
19 ~~to this section, it shall inform the responsible party of its right to~~  
20 ~~request the designation of an administering agency to oversee the~~  
21 ~~site investigation and remedial action at its site pursuant to Section~~  
22 ~~25262 and, if requested to do so by the responsible party, the local~~  
23 ~~agency shall provide assistance to the responsible party in preparing~~  
24 ~~and processing a request for that designation.~~

25 ~~(d) (1) This subdivision applies only to an unauthorized release~~  
26 ~~from a petroleum underground storage tank that is subject to~~  
27 ~~Chapter 6.75 (commencing with Section 25299.10).~~

28 ~~(2) Notwithstanding Section 25297.1, the board shall implement~~  
29 ~~a procedure that does not assess an owner, operator, or responsible~~  
30 ~~party taking corrective action pursuant to this chapter for the costs~~  
31 ~~of a local oversight program pursuant to paragraph (4) of~~  
32 ~~subdivision (d) of Section 25297.1. The board shall institute an~~  
33 ~~internal procedure for assessing, reviewing, and paying those costs~~  
34 ~~directly between the board and the local agency.~~

35 ~~(e) A person to whom an order is issued pursuant to subdivision~~  
36 ~~(e), shall have the same rights of administrative and judicial appeal~~  
37 ~~and review as are provided by law for cleanup and abatement~~  
38 ~~orders issued pursuant to Section 13304 of the Water Code.~~

39 ~~(f) (1) If a person to whom an order is issued pursuant to~~  
40 ~~subdivision (e) does not comply with the order, the board, a~~

1 regional board, or the local agency may undertake or contract for  
2 corrective action.

3 (2) The board, a regional board, or local agency shall be  
4 permitted reasonable access to property owned or possessed by an  
5 owner, operator, or responsible party as necessary to perform  
6 corrective action pursuant to this subdivision. The access shall be  
7 obtained with the consent of the owner or possessor of the property  
8 or, if the consent is withheld, with a warrant duly issued pursuant  
9 to the procedure described in Title 13 (commencing with Section  
10 1822.50) of Part 3 of the Code of Civil Procedure. However, if  
11 there is an emergency affecting public health or safety, or the  
12 environment, the board, a regional board, or local agency may  
13 enter the property without consent or the issuance of a warrant.

14 (3) The board, a regional board, or local agency may recover  
15 its costs incurred under this subdivision pursuant to Section 13304  
16 of the Water Code. If the unauthorized release is from an  
17 underground storage tank that is subject to Chapter 6.75  
18 (commencing with Section 25299.10), the board, a regional board,  
19 or local agency may also recover its costs pursuant to Section  
20 25299.70.

21 (g) The following uniform closure letter shall be issued to the  
22 owner, operator, or other responsible party taking corrective action  
23 at an underground storage tank site by the local agency or the  
24 regional board with jurisdiction over the site, or the board, upon  
25 a finding that the underground storage tank site is in compliance  
26 with the requirements of subdivisions (a) and (b) and with any  
27 corrective action regulations adopted pursuant to Section 25299.3  
28 and that no further corrective action is required at the site:

29 —

30 “[Case File Number]

31 Dear [Responsible Party]

32 This letter confirms the completion of a site investigation and  
33 corrective action for the underground storage tank(s) formerly  
34 located at the above-described location. Thank you for your  
35 cooperation throughout this investigation. Your willingness and  
36 promptness in responding to our inquiries concerning the former  
37 underground storage tank(s) are greatly appreciated.

38 Based on information in the above-referenced file and with the  
39 provision that the information provided to this agency was accurate  
40 and representative of site conditions, this agency finds that the site

1 investigation and corrective action carried out at your underground  
2 storage tank(s) site is in compliance with the requirements of  
3 subdivisions (a) and (b) of Section 25296.10 of the Health and  
4 Safety Code and with corrective action regulations adopted  
5 pursuant to Section 25299.3 of the Health and Safety Code and  
6 that no further action related to the petroleum release(s) at the site  
7 is required.

8 This notice is issued pursuant to subdivision (g) of Section  
9 25296.10 of the Health and Safety Code.

10 Please contact our office if you have any questions regarding  
11 this matter.

12 Sincerely,

13 [Name of Board Executive Director, Regional Board Executive  
14 Officer, or Local Agency Director]"

15 —

16 (h) Any order, directive, notification, or approval issued under  
17 Section 25299.37 as that section read on January 1, 2002, that was  
18 issued on or before January 1, 2003, shall be deemed to have been  
19 issued pursuant to this section.

20 SEC. 2.

21 SECTION 1. Section 25356.1.5 of the Health and Safety Code  
22 is amended to read:

23 25356.1.5. (a) Any response action taken or approved pursuant  
24 to this chapter shall be based upon, and no less stringent than, all  
25 of the following requirements:

26 (1) The requirements established under federal regulation  
27 pursuant to Subpart E of the National Oil and Hazardous  
28 Substances Pollution Contingency Plan (40 C.F.R. 300.400 et  
29 seq.), as amended.

30 (2) The regulations established pursuant to Division 7  
31 (commencing with Section 13000) of the Water Code, all  
32 applicable water quality control plans adopted pursuant to Section  
33 13170 of the Water Code and Article 3 (commencing with Section  
34 13240) of Chapter 4 of Division 7 of the Water Code, and all  
35 applicable state policies for water quality control adopted pursuant  
36 to Article 3 (commencing with Section 13140) of Chapter 3 of  
37 Division 7 of the Water Code, to the extent that the department or  
38 the regional board determines that those regulations, plans, and  
39 policies do not require a less stringent level of remediation than  
40 the federal regulations specified in paragraph (1) and to the degree

1 that those regulations, plans, and policies do not authorize  
2 decisionmaking procedures that may result in less stringent  
3 response action requirements than those required by the federal  
4 regulations specified in paragraph (1).

5 (3) Any applicable provisions of this chapter, to the extent those  
6 provisions are consistent with the federal regulations specified in  
7 paragraph (1) and do not require a less stringent level of  
8 remediation than, or decisionmaking procedures that are at variance  
9 with, the federal regulations set forth in paragraph (1).

10 (b) Any health or ecological risk assessment prepared in  
11 conjunction with a response action taken or approved pursuant to  
12 this chapter shall be based upon Subpart E of the National Oil and  
13 Hazardous Substances Pollution Contingency Plan (40 C.F.R.  
14 300.400 et seq.), the policies, guidelines, and practices of the  
15 United States Environmental Protection Agency developed  
16 pursuant to the federal act, and the most current sound scientific  
17 methods, knowledge, and practices of public health and  
18 environmental professionals who are experienced practitioners in  
19 the fields of epidemiology, risk assessment, environmental  
20 contamination, ecological risk, fate and transport analysis, and  
21 toxicology. Risk assessment practices shall include the most current  
22 sound scientific methods for data evaluation, exposure assessment,  
23 toxicity assessment, and risk characterization, documentation of  
24 all assumptions, methods, models, and calculations used in the  
25 assessment, and any health risk assessment shall include all of the  
26 following:

27 (1) Evaluation of risks posed by acutely toxic hazardous  
28 substances based on levels at which no known or anticipated  
29 adverse effects on health will occur, with an adequate margin of  
30 safety.

31 (2) Evaluation of risks posed by carcinogens or other hazardous  
32 substances that may cause chronic disease based on a level that  
33 does not pose any significant risk to health.

34 (3) Consideration of possible synergistic effects resulting from  
35 exposure to, or interaction with, two or more hazardous substances.

36 (4) Consideration of the effect of hazardous substances upon  
37 subgroups that comprise a meaningful portion of the general  
38 population, including, but not limited to, infants, children, pregnant  
39 women, the elderly, individuals with a history of serious illness,  
40 or other subpopulations, that are identifiable as being at greater



1 risk of adverse health effects due to exposure to hazardous  
2 substances than the general population.

3 (5) Consideration of exposure and body burden level that alter  
4 physiological function or structure in a manner that may  
5 significantly increase the risk of illness and of exposure to  
6 hazardous substances in all media, including, but not limited to,  
7 exposures in drinking water, food, ambient and indoor air, and  
8 soil.

9 (c) If currently available scientific data are insufficient to  
10 determine the level of a hazardous substance at which no known  
11 or anticipated adverse effects on health will occur, with an adequate  
12 margin of safety, or the level that poses no significant risk to public  
13 health, the risk assessment prepared in conjunction with a response  
14 action taken or approved pursuant to this chapter shall be based  
15 on the level that is protective of public health, with an adequate  
16 margin of safety. This level shall be based exclusively on public  
17 health considerations, shall, to the extent scientific data are  
18 available, take into account the factors set forth in paragraphs (1)  
19 to (5), inclusive, of subdivision (b), and shall be based on the most  
20 current principles, practices, and methods used by public health  
21 professionals who are experienced practitioners in the fields of  
22 epidemiology, risk assessment, fate and transport analysis, and  
23 toxicology.

24 (d) The exposure assessment of any risk assessment prepared  
25 in conjunction with a response action taken or approved pursuant  
26 to this chapter shall include the development of reasonable  
27 maximum estimates of exposure for both current land use  
28 conditions and reasonably foreseeable future land use conditions  
29 at the site.

30 (e) The exposure assessment of any risk assessment prepared  
31 in conjunction with a response action taken or approved pursuant  
32 to this chapter shall include the development of reasonable  
33 maximum estimates of exposure to volatile organic compounds  
34 that may enter structures that are on the site or that are proposed  
35 to be constructed on the site and may cause exposure due to  
36 accumulation of those volatile organic compounds in the indoor  
37 air of those structures.

38 ~~SEC. 3.~~

39 *SEC. 2.* Section 13304 of the Water Code is amended to read:

1 13304. (a) (1) Any person who has discharged or discharges  
2 waste into the waters of this state in violation of any waste  
3 discharge requirement or other order or prohibition issued by a  
4 regional board or the state board, or who has caused or permitted,  
5 causes or permits, or threatens to cause or permit any waste to be  
6 discharged or deposited where it is, or probably will be, discharged  
7 into the waters of the state and creates, or threatens to create, a  
8 condition of pollution or nuisance, shall upon order of the regional  
9 board, clean up the waste or abate the effects of the waste, or, in  
10 the case of threatened pollution or nuisance, take other necessary  
11 remedial action, including, but not limited to, overseeing cleanup  
12 and abatement efforts. ~~Any~~

13 (2) All cleanup and abatement efforts conducted by a discharger  
14 pursuant to this section, in addition to addressing any water quality  
15 impacts or threats, shall also address all potential human health  
16 and ecological threats caused or created by the discharge. ~~Cleanup~~

17 (3) (A) *Except as provided in subparagraphs (B) and (C),*  
18 *cleanup* and abatement efforts intended to address potential human  
19 health and ecological threats shall be consistent with, and no less  
20 stringent than, the *substantive* requirements of subdivisions (b),  
21 (c), (d), and (e) of Section 25356.1.5 of the Health and Safety  
22 Code. ~~A~~

23 (B) *The requirements of subparagraph (A) do not apply if the*  
24 *regional board determines the cleanup or abatement effort is in*  
25 *response to an emergency.*

26 (C) *Subparagraph (A) does not require this division to otherwise*  
27 *include the implementation of, or compliance with, the procedural*  
28 *requirements of, or any other substantive requirements of, Chapter*  
29 *6.8 (commencing with Section 25300) of Division 20 of the Health*  
30 *and Safety Code.*

31 (4) A cleanup and abatement order issued by the state board or  
32 a regional board may require the provision of, or payment for,  
33 uninterrupted replacement water service, which may include  
34 wellhead treatment, to each affected public water supplier or private  
35 well owner. ~~Upon~~

36 (5) *Upon* failure of any person to comply with the cleanup or  
37 abatement order, the Attorney General, at the request of the board,  
38 shall petition the superior court for that county for the issuance of  
39 an injunction requiring the person to comply with the order. In the  
40 suit, the court shall have jurisdiction to grant a prohibitory or

1 mandatory injunction, either preliminary or permanent, as the facts  
2 may warrant.

3 (b) (1) The regional board may expend available ~~money~~ *moneys*  
4 to perform any cleanup, abatement, or remedial work required  
5 under the circumstances set forth in subdivision (a), including, but  
6 not limited to, supervision of cleanup and abatement activities that,  
7 in its judgment, is required by the magnitude of the endeavor or  
8 the urgency for prompt action to prevent substantial pollution,  
9 nuisance, or injury to any waters of the state. The action may be  
10 taken in default of, or in addition to, remedial work by the waste  
11 discharger or other persons, and regardless of whether injunctive  
12 relief is being sought.

13 (2) The regional board may perform the work itself, or with the  
14 cooperation of any other governmental agency, and may use rented  
15 tools or equipment, either with operators furnished or unoperated.  
16 Notwithstanding any other provisions of law, the regional board  
17 may enter into oral contracts for the work, and the contracts,  
18 whether written or oral, may include provisions for equipment  
19 rental and in addition the furnishing of labor and materials  
20 necessary to accomplish the work. The contracts are not subject  
21 to approval by the Department of General Services.

22 (3) The regional board shall be permitted reasonable access to  
23 the affected property as necessary to perform any cleanup,  
24 abatement, or other remedial work. The access shall be obtained  
25 with the consent of the owner or possessor of the property or, if  
26 the consent is withheld, with a warrant duly issued pursuant to the  
27 procedure described in Title 13 (commencing with Section  
28 1822.50) of Part 3 of the Code of Civil Procedure. However, in  
29 the event of an emergency affecting public health or safety, the  
30 regional board may enter the property without consent or the  
31 issuance of a warrant.

32 (4) The regional board may contract with a water agency to  
33 perform, under the direction of the regional board, investigations  
34 of existing or threatened groundwater pollution or nuisance. The  
35 agency's ~~cost~~ *costs* of performing the contracted services shall be  
36 reimbursed by the regional board from the first available funds  
37 obtained from ~~cost-recovery~~ *cost-recovery* actions for the specific  
38 site. The authority of a regional board to contract with a water  
39 agency is limited to a water agency that draws groundwater from  
40 the affected aquifer, a metropolitan water district, or a local public

1 agency responsible for water supply or water quality in a  
2 groundwater basin.

3 (c) (1) If the waste is cleaned up or the effects of the waste are  
4 abated, or, in the case of threatened pollution or nuisance, other  
5 necessary remedial action is taken by any governmental agency,  
6 the person or persons who discharged the waste, discharges the  
7 waste, or threatened to cause or permit the discharge of the waste  
8 within the meaning of subdivision (a), are liable to that  
9 governmental agency to the extent of the reasonable costs actually  
10 incurred in cleaning up the waste, abating the effects of the waste,  
11 supervising cleanup or abatement activities, or taking other  
12 remedial action. The amount of the costs is recoverable in a civil  
13 action by, and paid to, the governmental agency and the state board  
14 to the extent of the latter's contribution to the cleanup costs from  
15 the State Water Pollution Cleanup and Abatement Account or other  
16 available funds.

17 (2) The amount of the costs constitutes a lien on the affected  
18 property upon service of a copy of the notice of lien on the owner  
19 and upon the recordation of a notice of lien, that identifies the  
20 property on which the condition was abated, the amount of the  
21 lien, and the owner of record of the property, in the office of the  
22 county recorder of the county in which the property is located.  
23 Upon recordation, the lien has the same force, effect, and priority  
24 as a judgment lien, except that it attaches only to the property  
25 posted and described in the notice of lien, and shall continue for  
26 10 years from the time of the recording of the notice, unless sooner  
27 released or otherwise discharged. Not later than 45 days after  
28 receiving a notice of lien, the owner may petition the court for an  
29 order releasing the property from the lien or reducing the amount  
30 of the lien. In this court action, the governmental agency that  
31 incurred the cleanup costs shall establish that the costs were  
32 reasonable and necessary. The lien may be foreclosed by an action  
33 brought by the state board on behalf of the regional board for a  
34 money judgment. ~~Money~~ *Moneys* recovered by a judgment in favor  
35 of the state board shall be deposited in the State Water Pollution  
36 Cleanup and Abatement Account.

37 (d) If, despite reasonable effort by the regional board to identify  
38 the person responsible for the discharge of waste or the condition  
39 of pollution or nuisance, the person is not identified at the time  
40 cleanup, abatement, or remedial work is required to be performed,

1 the regional board is not required to issue an order under this  
2 section.

3 (e) “Threaten,” for purposes of this section, means a condition  
4 creating a substantial probability of harm, when the probability  
5 and potential extent of harm make it reasonably necessary to take  
6 immediate action to prevent, reduce, or mitigate damages to  
7 persons, property, or natural resources.

8 (f) Replacement water provided pursuant to subdivision (a) shall  
9 meet all applicable federal, state, and local drinking water  
10 standards, and shall have comparable quality to that pumped by  
11 the public water system or private well owner prior to the discharge  
12 of waste.

13 (g) (1) Any public water supplier or private well owner  
14 receiving replacement water by reason of an order issued pursuant  
15 to subdivision (a), or any person or entity who is ordered to provide  
16 replacement water pursuant to subdivision (a), may request  
17 nonbinding mediation of all replacement water claims.

18 (2) If so requested, the public water suppliers receiving the  
19 replacement water and the persons or entities ordered to provide  
20 the replacement water, within 30 days of the submittal of a water  
21 replacement plan, shall engage in at least one confidential  
22 settlement discussion before a mutually acceptable mediator.

23 (3) Any agreement between parties regarding replacement water  
24 claims resulting from participation in the nonbinding mediation  
25 process shall be consistent with the requirements of any cleanup  
26 and abatement order.

27 (4) A regional board or the state board is not required to  
28 participate in any nonbinding mediation requested pursuant to  
29 paragraph (1).

30 (5) The party or parties requesting the mediation shall pay for  
31 the costs of the mediation.

32 (h) As part of any cleanup and abatement order that requires  
33 the provision of replacement water, a regional board or the state  
34 board shall request a water replacement plan from the discharger  
35 in cases where replacement water is to be provided for more than  
36 30 days. The water replacement plan is subject to the approval of  
37 the regional board or the state board prior to its implementation.

38 (i) A “water replacement plan” means a plan pursuant to which  
39 the discharger will provide replacement water in accordance with  
40 a cleanup and abatement order.

(j) This section does not impose any new liability for acts occurring before January 1, 1981, if the acts were not in violation of existing laws or regulations at the time they occurred.

(k) Nothing in this section limits the authority of any state agency under any other law or regulation to enforce or administer any cleanup or abatement activity.

(l) The Legislature declares that the amendments made to subdivision (a) of this section by Senate Bill 1004 of the 2003–04 Regular Session do not constitute a change in, but are declaratory of, existing law.

*SEC. 3. Section 13304.2 is added to the Water Code, to read:*

*13304.2. (a) A person conducting cleanup, abatement, or other remedial action pursuant to Section 13304 for a brownfield, as defined in subparagraph (A) of paragraph (2) of subdivision (a) of Section 25395.20 of the Health and Safety Code, but without regard to the exclusion in subparagraph (B) of paragraph (2) of subdivision (a) of Section 25395.20 of the Health and Safety Code, for a hazardous substance, as defined in Sections 25316 and 25317 of the Health and Safety Code, that is neither de minimus nor authorized, may be required by the state board or a regional board to assess the potential human health or ecological risks caused or created by the discharge, using human health and environmental screening levels or a site-specific assessment of risks.*

*(b) In conducting a site-specific assessment of human health or ecological risks, the discharger shall address all of the following factors to the extent relevant based on site-specific conditions:*

*(1) An evaluation of risks posed by acutely toxic hazardous substances.*

*(2) An evaluation of risks posed by carcinogenic or other hazardous substances that may cause chronic disease.*

*(3) Consideration of possible synergistic effects resulting from exposure to, or interaction with, two or more hazardous substances.*

*(4) Consideration of the effect of hazardous substances upon subgroups that comprise a meaningful portion of the general population, including, but not limited to, infants, children, pregnant women, or other subpopulations that are identifiable as being at greater risk than the general population of adverse health effects due to exposure to hazardous substances.*

*(5) Consideration of exposure level and body burden level that alter physiological function or structure in a manner that may*

1 significantly increase the risk of illness and of exposure to  
2 hazardous substances in all media, including, but not limited to,  
3 exposures in drinking water, food, ambient and indoor air, or soil.

4 (6) The development of reasonable maximum estimates of  
5 exposure for both current land use conditions and reasonably  
6 foreseeable future land uses at the site.

7 (7) The development of reasonable maximum estimates of  
8 exposure to volatile organic compounds that may enter structures  
9 that are on the site or that are proposed to be constructed on the  
10 site and that may cause exposure due to accumulation of these  
11 volatile organic compounds in the indoor air of those structures.

12 (c) The state board or a regional board may document its  
13 decision to require a site-specific assessment of human health or  
14 ecological risks in a letter issued to the discharger pursuant to  
15 Section 13267 through amendment of the cleanup and abatement  
16 order issued pursuant to Section 13304, or through other written  
17 means that the board deems appropriate.

18 (d) The provisions of this section shall be prospective in nature  
19 and may not be applied to a person conducting cleanup, abatement,  
20 or other remedial action pursuant to Section 13304 that began  
21 prior to the effective date of the charter that added this section.